

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IN RE: PHENYLPROPANOLAMINE  
(PPA) PRODUCTS LIABILITY  
LITIGATION,

MDL NO. 1407

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This document relates to:

Vera Davenport v. Bayer  
Corporation, et al., No. 3-453

ORDER GRANTING BAYER  
CORPORATION'S OBJECTION TO  
ORDER TO SHOW CAUSE WHY THIS  
CASE SHOULD NOT BE REMANDED  
AND VACATING ORDER TO SHOW  
CAUSE

On March 8, 2005, the court issued an order to show cause why this case should not be remanded. Defendant Bayer Corporation filed an objection, claiming that necessary, outstanding discovery remains. Bayer requests that the court retain jurisdiction of the case and extend the case-specific fact discovery deadline by ninety days. Defendant SmithKline Beecham Corporation joins in the objection. Having reviewed Bayer's objection to remand, plaintiff's response, and the reply thereto, the court hereby finds and rules as follows:

Bayer urges this court to stay remand of this case, claiming

1 that it recently discovered previously undisclosed medical  
2 records which show that prior to plaintiff's alleged stroke, she  
3 was hospitalized after attempting to commit suicide. Plaintiff  
4 did not disclose the attempted suicide in the Plaintiff's Fact  
5 Sheet ("PFS") or during her deposition.<sup>1</sup> Bayer argues that the  
6 attempted suicide is relevant to plaintiff's present claims  
7 because she alleges that she suffers from psychological and  
8 cognitive injuries as a result of her stroke. Bayer has the right  
9 to explore whether such conditions existed at the time of the  
10 suicide attempt. Therefore, Bayer argues, its legitimate  
11 discovery interests outweigh any burden on plaintiff attributable  
12 to the requested ninety day extension of discovery.

13 Plaintiff urges the court deny to Bayer's extension request  
14 and, instead, remand the case. She asserts that Bayer has had  
15 medical records pertaining to the suicide attempt in its  
16 possession since June 9, 2004.<sup>2</sup> As such, Bayer had ample time to  
17 pursue discovery relating to that matter. Plaintiff also argues  
18 that her suicide attempt, which occurred almost ten years prior  
19 to the events giving rise to the current litigation, has no  
20 bearing on any issue in this case.

21 The court disagrees. In the present action plaintiff claims  
22 that she suffered cognitive and psychological injury from her

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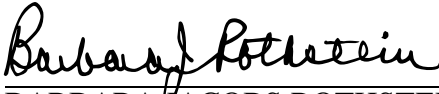
23  
24 <sup>1</sup>Plaintiff's deposition was taken on August 6, 2004.

25 <sup>2</sup>Plaintiff admits that she did not specifically disclose the  
26 suicide attempt in the PFS or at her deposition; however, she did  
disclose Trident Medical Center in the PFS.

1 stroke. As such, Bayer is entitled to explore the circumstances  
2 surrounding the suicide attempt, particularly plaintiff's mental  
3 state at the time. In addition, regardless of when Bayer first  
4 received the Trident medical records, plaintiff should have  
5 disclosed the suicide attempt in the PFS.

6 Based on the forgoing, the court GRANTS Bayer's objection to  
7 the order to show cause why this matter should not be remanded,  
8 and vacates the March 8, 2005 Order to Show Cause. The court  
9 hereby extends the case-specific fact discovery deadline in this  
10 case by ninety days from the date of this order. At the  
11 expiration of the ninety period, the case will be included on the  
12 court's next Suggestion of Remand Order.

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14 DATED at Seattle, Washington this 9th day of May, 2005.

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18 BARBARA JACOBS ROTHSTEIN  
19 UNITED STATES DISTRICT COURT  
20 JUDGE  
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